

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3908 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

BALDEVSINH CHANDFANSINH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR MUKUND M DESAI for Petitioner
Mr.DP JOSHI, A.G.P. as instructed by MR SP HASURKAR,
Counsel for Respondents No.1 & 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/02/2000

ORAL JUDGEMENT

1. The prayer of the petitioner in this writ
petition is for quashing the orders dated 25.9.1983 and
13.8.1986 passed by the respondent No.1 and to direct the

respondents to pay Special Pay and allowance to the petitioner at the rate of 40 % and also the arrears of special pay and allowance at this rate together with interest at the rate of 12 % p.a.

2. List has been revised four times, but none appeared for the petitioner on any of the calls. Shri S.P.Hasurkar appears for respondents No.1 & 2. He states that counter affidavit has been filed much earlier, but it is not on record.

3. The case of the petitioner is that he joined services as Peon on 17.10.1964 in Gujarat High Court. This is all together irrelevant for deciding this petition. Thereafter the petitioner was appointed as Naik-cum-Driver in Gujarat Secondary Education Tribunal with effect from 1.9.1974. It was the date when this Tribunal started functioning. Various duties assigned and performed by the petitioner are enumerated in Para : 4 of the petition which need not be high-lighted in detail. On the basis of additional duties assigned to the petitioner he claimed special pay and special allowance. He also put shelter behind the report of Third Pay Commission mentioned in Para : 6 of the petition. Then comes third stage when the petitioner was appointed in Gujarat Affiliated College Tribunal. This Tribunal came into existence in the year 1982. The Presiding officer took over charge in this Tribunal on 27.5.1982. On the basis of several correspondence referred in the petition it was averred that no peon was appointed in the Tribunal. As such the petitioner was performing the duties of driver as well as Peon. Again series of correspondence was followed, but the special pay was not granted to the petitioner nor special allowance. Hence this petition.

4. The first contention of Shri Hasurkar, learned Counsel for the respondents, has been that since no post of driver - cum - Nayak was sanctioned for Gujarat Higher Secondary Education Tribunal, hence no special allowance could be given to the petitioner. He also argues that since two Posts of peons were sanctioned for this tribunal, request of the Presiding Officer of the Tribunal favouring the petitioner was turned down by the Government which was communicated through the impugned orders contained in Annexure : N dated 25.9.1985 and Annexure : O dated 13.8.1986. Annexure : O clearly shows that since two posts of Peons were sanctioned the post of Naik-cum-driver could not be sanctioned by the State Government. This communication is from the Section Officer of the Education Department. On the basis of

this, he contended that because no post of Naik was sanctioned by the Government the petitioner could not be granted any special allowance even if some work here and there was taken from the petitioner which might have been taken from Naik if appointed on such sanctioned post. Shri Hasurkar further pointed out that nothing survives in this petition in view of subsequent Government Resolution No.CST-1087-CC-7-Kha-1 dated 25.4.1991 which relates to the petitioner and through this resolution the petitioner was granted special allowance at the rate of Rs.25/- per month with effect from 27.5.1982 to 31.5.1986 ex-post facto. This writ petition was filed in the year 1987 though it was ready on 29.5.1986. In view of this resolution which is kept on record, nothing survives in this petition. No further allowance can be granted to the petitioners.

The writ petition is accordingly dismissed. No order as to costs.

sd/-

Date : February 10, 2000 (D. C. Srivastava, J.)

sas